

EMANUEL TUCKER.

Petitioner

V.

**NFN MARTINEZ; DAVID EBBERT;
and KEVIN BITTENBENDER, d/b/a
U.S. DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS.**

Respondents

CIVIL NO. 1:10-CV-1057

(Judge Rambo)

(Magistrate Judge Smyser)

MEMORANDUM

Before the court is a report of Magistrate Judge Smyser in which he recommends that Petitioner Tucker's petition for writ of habeas corpus be dismissed for failure to exhaust administrative remedies or, in the alternative, that the petition be denied on the merits. Objections to the report and recommendation were due no later than August 6, 2010. No objections have been filed.

In the pleadings before the court, Petitioner concedes that he has not exhausted administrative remedies. He claims, however, that he would be released from prison before the time to exhaust was completed. The magistrate judge found that the time to exhaust could have been completed prior to the expiration of his sentence.

This court will adopt the report and recommendation and dismiss on the basis of failure to exhaust administrative remedies. An appropriate order will be issued.

Dated: August 11, 2010.

s/Sylvia H. Rambo
United States District Judge

Dated: August 11, 2010.